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Supreme Court of the United States

OCTOBER TERM, 1946

No. 624

AMERICAN RAILROAD COMPANY OF PUERTO RICO,

Petitioner,

against

ANTONIO TORRES ROMERO, *et als.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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PETITION

To the Honorable FREDERICK MOORE VINSON, *Chief Justice,* and the Associate Justices of the Supreme Court of the United States:

Your Petitioner respectfully shows:

Statement

Petitioner is a public service corporation operating a railroad in Puerto Rico.

In the month of August, 1941, Respondents—employees of Petitioner—through their attorneys, entered into negotiations with petitioner looking to the settlement of wage claims arising under the Fair Labor Standards Act of 1938 (R. 52). The amounts claimed were for the difference

between the wages paid and the wages fixed by the Fair Labor Standards Act and covered the period that the Act had been in force, or nearly three years. A preliminary agreement based upon the maximum amount that Petitioner estimated that it was able to pay, as to which the Territorial Representative of the Wage and Hour Division in Puerto Rico was consulted and informed, was submitted to the Assistant Administrator of the Wage and Hour Division in Washington during the month of September. The Assistant Wage and Hour Administrator conditioned the appointment of an industry committee to inquire into a decrease in the statutory minimum wage upon satisfactory arrangements by the petitioner to pay the amount of restitution to be fixed as a result of an investigation by the Wage and Hour Division as to the capacity of petitioner to pay (R. 52, 53, 54, 62, 65, 142, 143, 144, 152).

On November 4, 1941 a definite agreement was signed by representatives of the employees and of petitioner and later ratified by the parties, by which petitioner undertook to pay and the employees to accept in full settlement of their claims, seven hundred thousand dollars and such further additional amount as the Wage and Hour Division might determine that petitioner was able to pay as a result of an investigation of the business and financial ability of petitioner conducted by the Wage and Hour Division (R. 142, 143).

One of the considerations for the agreement was that it would enable the railroad to continue operations and "not only be to the interest of the workers and the company but would also be a matter of fundamental importance for the general public." (R. 142, 145, 157.)

The investigation was made and a report rendered to the Wage and Hour Division by a public accountant designated for that purpose, in which the possibility that the petitioner might obtain funds from the owner of all the railroad properties, the Spanish Company—Compañía de Ferrocarriles de Puerto Rico—, and of the Compañía Ferroviaria de Circunvalación de Puerto Rico, a corporation formed for the purpose of acquiring the stock and bonds of

the Compañía de Ferrocarriles and American Railroad Company, was also fully examined.

The investigation resulted in a finding that seven hundred thousand dollars was the maximum amount that Petitioner could pay. This amount—which was 44.8 per cent of the amount due petitioner's employees, assuming that they were each entitled to the benefits of that Act for all of the time that they worked for petitioner—was distributed among the employees, who signed release receipts, a copy of which is printed at pages 146 and 147 of the Record.

An industry committee was appointed and as a result of its report and recommendation a minimum rate of not less than twenty cents an hour was fixed by the Administrator for the railroad and property carrier industry in Puerto Rico by a Wage Order effective April 7, 1942 (R. 137-140, inc.).

On July 21, 1942, some 1,017 employees of petitioner, all of whom except three, had received payment under the terms of the Agreement of November 7, 1941 and signed releases, brought suit in the District Court of the United States for Puerto Rico against petitioner to recover the difference between the full amount that was owing them on November 4, 1941 and the amounts paid by petitioner under said Agreement, plus liquidated damages (R. 12-14).

In its answer to the Complaint petitioner set out as a second special defense the accord and satisfaction constituted by the Agreement of November 7, 1941 and receipts and releases signed by all plaintiffs, here respondents (R. 16, 17, 18).

Upon motion of plaintiffs, here respondents, a separate trial was had on the special defense of accord and satisfaction. The District Court sustained this defense and entered judgment dismissing the complaint as to respondents (R. 159).

Respondents appealed from the judgment to the Circuit Court of Appeals for the First Circuit.

No controverted issue of fact was raised by appellants. The correctness of the findings of fact of the District Court was not challenged or denied. The only question raised by respondents as appellants and involved in the appeal was whether the accord and satisfaction entered into for the considerations and under the special circumstances set out in the findings of the District Court was precluded by the Fair Labor Standards Act. The Circuit Court of Appeals held that the Act prohibited such a contract and reversed the judgment of the District Court.

Rulings of the Court Below

The District Court made the following Findings of Fact (R. 153, 154):

I

"American Railroad Company of Puerto Rico is and was at all times here material, engaged in operating a passenger and freight railroad system within the Island of Puerto Rico.

II

On November 4, 1941 certain employees of defendant, represented by attorneys Jaime J. Saldaña and Enrique Campos del Toro, and defendant represented by attorneys James R. Beverley, Henri Brown, Jaime Sifre and Carlos J. Torres, and also by its officers Rafael Martínez Dominguez and Secundino Lozana, entered into a written agreement relating to the claim of defendant's employees for wages alleged to be due them under the Fair Labor Standards Act. The original of said agreement in Spanish accompanied by an English translation, was introduced and admitted in evidence and marked Exhibit (1).

III

All plaintiffs in this case except Ernesto Quiñones, Pedro Cañizares and Trifon Aguayo, approved and ratified said agreement of November 4, 1941.

IV

All of the plaintiffs except Ernesto Quiñones, Pedro Cañizares and Trifon Aguayo, were paid by defendant in accordance with the terms of said agreement and upon receipt of the amounts so paid executed a release, a sample copy of which in Spanish accompanied by an English translation was introduced and admitted in evidence as **Exhibit (2)**.

V

The sum of $660,000 agreed upon in paragraph (4) of the agreement covers the period between the effective date of the Fair Labor Standards Act (October 24, 1938) and the date of the agreement, and represents 44.8 per cent of the amount due to defendant's employees assuming that they were each entitled to the benefits of the Act for all the time worked for defendant during said period.

VI

At the time said agreement of November 4, 1941 was executed defendant was unable to pay in full the amount due to employees assuming that each employee was covered by the Act. The sum of $700,000 represented the maximum which defendant could pay to its employees and thereafter continue operations or avoid insolvency. This was the opinion of plaintiffs at the time of the agreement and I reach a like conclusion.

VII

Defendant's employees with the exception of the three specifically mentioned, approved and ratified the said agreement. By agreement of all parties a certified public accountant was authorized to make such investigation as was considered necessary to determine the extent to which defendant was able to pay all of its employees the amount of wages due. The accountant made his report and stated that $700,000 represented the maximum amount which defendant could pay and continue operations or avoid bankruptcy proceedings.

VIII

From 1941 to 1942 the consolidated net income of the three companies, American Railroad Company, Cía. de Ferrocarriles and Cía. Ferroviaria de Circunvalación, shows a loss for every single year since 1933 totalling approximately $1,300,000 for the twelve year period."

The District Court concluded that in view of the facts found and considering the extraordinary circumstances existing at the time the agreement was made, the agreement was valid and enforceable as to all plaintiffs who approved and ratified the same (R. 155).

In the Opinion the District Court stated that in the instant case is found every element suggested in the opinion of Mr. Justice HOLMES in *Fort Smith and Western Railroad* vs. *Mills, Receiver,* 253 U. S. 206.

The Circuit Court of Appeals held (R.):

"Whether enforcement of the statutory rights of appellants will benefit or injure them, their employer or the community, is legally immaterial. The case is governed by Brooklyn Savings Bank *vs.* O'Neil, 324 U. S. 697, and D. A. Schulte, Inc. *v.* Salvatore Gangi, decided by the Supreme Court on April 29, 1946. The Brooklyn case decides that in the absence of a bona fide dispute between the parties, an agreement to accept less than the full amount due under the Act, including liquidated damages, is invalid. It does not appear that there was any dispute between the parties to the present suit when releases were executed. The Schulte case decides that even a dispute regarding coverage does not validate an agreement to accept less than the full statutory amount. The existence in the present case of a question of policy cannot have a greater effect. The Act does not exempt employers who are in financial difficulties."

It is further stated:

"Fort Smith & Western Railroad *vs.* Mills, 253 U. S. 206, on which appellee relies, is not in point. In that case, which arose under the Adamson Law, 39 Stat. 721,

the question was not whether employees could require their employer to comply with the law but whether the District Attorney could require the receiver of a railroad to comply with the law when the receiver and employees were agreed in wishing to disregard it."

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 24, 1946 (R. 174). Jurisdiction is invoked under Section 240(a) of the Judicial Code, as amended by Act of February 13, 1925, c. 229 (43 Stat. 638, 28 U. S. Code Sec. 347).

Errors to be Urged

The Circuit Court of Appeals erred in holding that the accord and satisfaction between Petitioner and Respondents was forbidden by the Fair Labor Standards Act; (a) that the decisions of this Court in *Brooklyn Savings Bank* vs. *O'Neil*, 234 U. S. 697, and *D. A. Schulte, Inc.* vs. *Salvatore Gangi*, 90 L. Ed. 873, were controlling, and (b) that *Fort Smith & Western Railroad Co.* vs. *Mills*, 253 U. S. 206, did not establish a principle controlling its decision.

Question Presented

Whether the Fair Labor Standards Act precludes a bona fide settlement of a claim for minimum wages, overtime and liquidated damages made by employees of an insolvent or financially embarrassed Puerto Rican railroad unable to pay the entire claim, when it is satisfactorily established that the amount paid under the settlement is the maximum amount that the railroad company is able to pay and in excess of the amount that the employees could recover in an action for the full amount and where such an action would probably result in the discontinuance of the operation of the railroad with consequent loss of employment by the employee claimants and serious injury to the public served by the railroad.

Reasons for Granting the Writ

1. The Circuit Court of Appeals has decided an important question of Federal law which has not been but should be settled by this Court, namely:

Whether an accord and satisfaction by which employees of a public service railroad accept part payment of amounts due them as wages under the Fair Labor Standards Act in full satisfaction of the entire amounts due, in consideration of the insolvency of the employer and its inability to pay more, the continuance of the operation of the railroad and their own employment, and the prejudice to the public that would result from discontinuance or abandonment of the railroad, is forbidden by the Act.

That question involves the broader question whether such employees can lawfully accept a plan of reorganization or be bound by a reorganization decree, whether employees of an employer that may be adjudicated a bankrupt can make such a settlement, and whether their claim for wages except those exempted by the Bankruptcy Act are released by the discharge of the bankrupt.

2. The decision below is probably in conflict with the applicable decisions of this Court. This Court held in *Fort Smith & Western Railroad Company* vs. *Mills*, 253 U. S. 862, that the right to a mandatory statutory minimum wage could be waived by railroad employees in consideration of the insolvency of the railroad to enable it "to go on barely paying its way, if it did so, not without impairing the mortgage security, not to speak of its capital." The *Fort Smith* case involved the wage rate fixed by the Adamson Act but the principle established is equally applicable to similar agreements under the Fair Labor Standards Act. This appears, inferentially at least, from the mention of this case in *Brooklyn Savings Bank* vs. *O'Neil*, 325 U. S. 697, 709.

The Circuit Court of Appeals considered that the decisions of this Court in *Brooklyn Savings Bank* vs. *O'Neil*, *supra*, and *D. A. Schulte* vs. *Salvatore Gangi*, 90 L. Ed. 873,

controlled its decision and in so doing misapplied these decisions neither of which considered or decided the validity of an accord and satisfaction or settlement involving exceptional circumstances of the kind presented by the instant case.

3. The decision of the Circuit Court of Appeals vitally affects the public interest and economic life of Puerto Rico in that its necessary consequence is the discontinuance of the principal railroad system of the island and the loss of employment by a large number of its citizens in an island where unemployment is a chronic evil.

WHEREFORE, your Petitioner, referring to the attached brief in support of the foregoing reasons for review, respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the First Circuit, commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and of the proceedings in the said Circuit Court of Appeals had in the case numbered and entitled on its docket No. 4122, *Antonio Torres Romero, et al., Plaintiffs-Appellants* vs. *American Railroad Company of Puerto Rico, Defendant-Appellee,* to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment herein of said Circuit Court of Appeals be reversed and for such other relief as to this Court may seem proper.

AMERICAN RAILROAD COMPANY OF PUERTO RICO,
Petitioner.

JAMES R. BEVERLEY,
HENRI BROWN,
Attorneys for Petitioner.

October, 1946.

BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinion of the Circuit Court of Appeals is reported in 156 F. 2d, and appears at R. pages 173, 174. That of the District Court is not reported but appears at pages 153-159 inclusive of the Record.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 27, 1946.

Jurisdiction is invoked under Sec. 240 of the Judicial Code, as amended by Act of February 13, 1925 (28 U. S. C. Sec. 347).

Statement

A statement of the facts, questions involved and of assigned errors will be found in the petition.

Statutes Involved

The Fair Labor Standards Act of 1938 (Act of June 25, 1938, C. 676, 52 Stat. 1060, as amended by Res of June 26, 1940, c. 432 Sec. 3 (a) (b) 54 Stat. 616, Tit. 29 U. S. C. Secs. 201-219), and more particularly Secs. 2, 5 and 6 of the Act (Title 29 U. S. C. Secs. 202, 205 and 206). Bankruptcy Act, Sec. 77, Title 11 U. S. C. Sec. 205; Organic Act of Puerto Rico, Sec. 38, 39 Stat. 951, Title 48 U. S. C. Sec. 470.

Summary of Argument

The Fair Labor Standards Act of 1938 does not preclude or forbid an Accord and Satisfaction under the extraordinary circumstances of the instant case. The decision of the Circuit Court of Appeals to the contrary was induced by the erroneous assumption that the decisions of

this Court in *Brooklyn Savings Bank* vs. *O'Neil*, 325 U. S. 697 and *D. A. Schulte* vs. *Salvatore Gangi*, 90 L. Ed. 873 were applicable and controlling and that *Fort Smith & Western Railroad Company* vs. *Mills*, 253 U. S. 862, was neither applicable nor controlling.

ARGUMENT

The accord and satisfaction was a valid agreement not precluded by the Fair Labor Standards Act.

The Circuit Court of Appeals holds that insolvency of a railroad employer does not authorize an agreement by its employees to accept less than the total amount of wages due under the statute where failing such an agreement the employees would ultimately receive less than the agreed amount, in all probability would lose their employment through the discontinuance of the railroad and the public be deprived of a necessary public service.

The trial court held that these considerations motivated the agreement and that the apprehended consequences to employees, employer and the public would ensue. The agreement was based on these facts which were not controverted. The only question of law decided by the District Court was as to whether the agreement—the accord and satisfaction—was forbidden by the Fair Labor Standards Act and that question of law is all that the Circuit Court of Appeals decides.

Whether employees covered by the Fair Labor Standards Act could, under any circumstances, in advance of the performance of the work for which they were employed, contract for a minimum wage and overtime at a rate lower than that fixed by the Act or could, for any period of time, render voluntary gratuitous service is a question clearly distinct from that passed on by the lower courts. Here, the services had been performed, a debt had been incurred. Congress, of course, was cognizant of the fact that, as to wage debts, the amounts that employee creditors covered by

the Fair Labor Standards Act, could recover, in excess of such portion that enjoyed priority, would be limited by the assets of the employer. In other words, Congress knew that an employer whose gross realizable assets are worth one hundred thousand dollars could not pay a debt of two hundred thousand dollars. Doubtless, the Congress did not contemplate wage debts arrearages covering several years. But in view of differences of opinion and doubts as to coverage, evidenced by the numerous cases in which these questions were submitted to the Courts, it was inevitable that there should be arrearages.

There is a very clear distinction between contracts fixing wages for future services and contracts in settlement of debts due. A contract to render services for a stipulated or statutory wage is a wage contract. A contract to settle a due indebtedness is not a wage contract.

It should be noted that the Fair Labor Standards Act makes a distinction between Puerto Rican employers and employees and those in continental United States. In the Act as passed in 1938 the minimum statutory wages fixed by the Act were applicable to Puerto Rico. Industry Committees could not recommend or the Administrator fix lower minima. June 26, 1940 (Pub. Res. No. 88, 76th Congress), Congress, recognizing the different situation of employers and employees in Puerto Rico subject to the Act, authorized the Administrator to appoint separate industry committees to recommend and the Administrator to fix minimum wages in Puerto Rico lower than those fixed by Section 6(a)(1), (2) and (3) of the Act (Title 29 U. S. C. Section 206(a)(1), (2), (3) and subsection c). The Administrator, in reducing the minimum wage for petitioner's employees to two-thirds of the statutory minimum wage by the Wage Order effective April 7, 1942 (R. 137-140 inc.), obviously found that the reduced minimum wage would not (1) be detrimental to the minimum standard of living necessary for the health, efficiency and general well-being of the workers; (2) cause commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the

several States; (3) burden commerce or the free flow of goods in commerce; (4) constitute an unfair method of competition in commerce; (5) lead to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; or (6) interfere with the orderly and fair marketing of goods in commerce. (Fair Labor Standards Act, Section 2(a), Title 29, Sec. 202(a), U. S. C.). It is submitted that the accord and satisfaction entered into by respondents and petitioner likewise does not offend against the policy declared by Congress in the above cited Section of the Act.

The Act does not expressly prohibit employees from exercising the right—open to other citizens—of salvaging as much of wage arrearages as is possible by agreement with an insolvent employer unable to pay more. It is submitted that such a prohibition should not be inferred from the policy of the Act.

Ability to pay and the maximum amount that an insolvent employer can pay are both questions of fact.

Retention of employment through such an agreement tends to accomplish one of the purposes of the Act. When the employer is a public service railroad, the continuance of each public service is a matter in which its employees as members of the general public have a legitimate interest and concern. An agreement which enables the continuance of the railroad likewise serves a purpose for which the Fair Labor Standards Act was enacted.

As stated by the District Court: "We must not overlook the fact also that sustaining the validity of this agreement will have the effect of keeping the channels of interstate commerce open, whereas a different conclusion might have an opposite effect by forcing the carrier into receivership or liquidation" (R. 159). The situation of a Puerto Rican railroad is quite different from that of railroads in Continental United States in that other Federal Laws applicable to railroads in Continental United States are not applicable to Puerto Rico. Among others, the Interstate Commerce Act, the Safety Appliance Acts, An Act to amend an Act, entitled "An Act to regulate com-

merce, approved February 4, 1887, and all Acts amendatory thereof, by providing for a valuation of various kinds of property of carriers subject thereto and serving information concerning their stocks, bonds and other securities" approved March 1, 1913, do not apply to Puerto Rico. (Organic Act of Puerto Rico, Sec. 38, 39 Stat. 951, Title 48 U. S. Code 750.) As a consequence, the Bankruptcy Act (Title 11, U. S. C. Sec. 205) providing for the reorganization of railroads is probably not available to a Puerto Rican railroad.

The Circuit Court of Appeals erroneously considered that its decision in the instant case was ruled by *Brooklyn Savings Bank* vs. *O'Neil,* 324 U. S. 697, and *D. A. Schulte* vs. *Salvatore Gangi,* 90 L. Ed. 873. It misapplied both decisions. *Linstead* vs. *Chesapeake & Ohio Ry. Co.,* 276 U. S. 28, 32, 34, *Ingram Day Lumber Co.* vs. *McLouth,* 275 U. S. 471, 474. The only similarity between the facts in these cases and those in the instant case lies in the fact that those cases involved delayed payments or partial payments of wage arrearages. But in neither of the cases cited was there any claim that the employers were insolvent or unable to pay, nor was the accord and satisfaction based on insolvency or inability to pay or retention of employment as consideration. In neither case was the employer a public service railroad, and in neither case was the public interest in the preservation and continuance of a vitally necessary public service involved. In the majority opinion in the Brooklyn case the Court said at page 709: "Nor does the instant case involve exceptional circumstances of the kind held to justify a waiver agreement such as was upheld in *Ft. Smith & W. R. Co.* vs. *Mills,* 253 U. S. 206, 64 L. Ed. 862, 40 S. Ct. 526." Expressly, therefore, the decision in the Brooklyn case did not consider or decide as to the validity of an accord and satisfaction entered into under exceptional circumstances of the character indicated. Nor does the *Schulte* case consider or decide the validity of an accord and satisfaction based upon like exceptional circumstances.

The Circuit Court of Appeals held that the *Ft. Smith* case was "not in point". Its reasons for so holding are conjectural. It states that the *Ft. Smith* case arose under the Adamson Law, 39 Stat. 721, and that the question involved was not whether employees could require their employer to comply with the law but whether the District Attorney could compel such compliance.

The Adamson Act, like the Fair Labor Standards Act, fixed both the standard of a day's work and a minimum wage. Both provisions were equally mandatory. *Wilson* vs. *New*, 243 U. S. 332, 345. The first, the eight-hour standard, was permanently fixed. The second, fixing the wage standard, was for a limited time. But the fact that the time for which the wage was fixed was limited, in nowise affects its mandatory character during the time it was in effect. The wage agreement involved in the *Ft. Smith* case was made during the period in which the provision was in force. The minimum wages fixed in the Fair Labor Standards Act since June 26, 1940 were not permanent because the Administrator was authorized to reduce them.

The nature of the suit in which the validity of the agreement between the Receiver-employer and the employees of the railroad is adjudicated is immaterial.

The Agreement in the *Ft. Smith* case differs from that involved in the instant case in that it was a wage contract entered into in advance of the performance of the work to be compensated.

The Agreement in the instant case is the settlement of a debt for work performed for considerations among which are the same reasons and considerations which motivated the Agreement in the *Ft. Smith* case. The following language of Mr. Justice HOLMES in *Ft. Smith & Western Railroad Company* vs. *Mills, supra,* is peculiarly appropriate as applied to the Agreement in the instant case:

> "An insolvent road had succeeded in making satisfactory terms with its men, enabling it to go on, barely paying its way, if it did so, not without impairing even the mortgage security, not to speak of its capital. We must accept the allegations of the bill, and must as-

sume that the men were not merely negatively refraining from demands under the Act, but, presumably, appreciating the situation, desired to keep on as they were. To break up such a bargain would be at least unjust and impolitic, and not at all within the ends the Adamson law had in view."

That the accord and satisfaction in the instant case was beneficial to respondent employees, to petitioner and to the public, is undoubted. It is respectfully submitted that a law enacted for the benefit and protection of employees and that of the general public as well, should not be construed to deprive employees of the right to prevent serious financial loss and loss of employment by a bona fide accord and satisfaction; that a law designed to keep open the channels of commerce should not be invoked to close such channels.

Conclusion

The decision of the District Court holding that the Accord and Satisfaction was valid and respondents not entitled to recover, was right.

The Circuit Court of Appeals was in error in holding that the Accord and Satisfaction was precluded by the Fair Labor Standards Act and on that ground reversing the judgment of the District Court. The Writ of Certiorari should be granted, the judgment of the Circuit Court of Appeals reversed, and the judgment of the District Court of the United States for Puerto Rico affirmed.

Respectfully submitted,

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